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IN THE
Supreme Court of the United States

No. _____

MARGARET M. MCGOWAN, ET AL.,

Appellants,

v.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

JURISDICTIONAL STATEMENT

Appellants appeal from the mandate of the Court of Appeals of Maryland No. 237, September Term, 1958, filed May 14, 1959, in the case of *Margaret M. McGowan, et al. v. State of Maryland*, 151 A. 2d 156, affirming convictions by the Circuit Court for Anne Arundel County on October 23, 1938, in seven Sunday "Blue Laws" cases, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the Court of Appeals of Maryland is reported in 151 A. 2d 156. Copy of the opinion is attached hereto as Appendix B.

JURISDICTION

This suit was brought under 28 U.S.C. Sec. 1257(2) to reverse the Court of Appeals, the highest Court of the State of Maryland, whose mandate was filed May 14, 1959, and notice of Appeal was filed in that Court on August 3, 1959. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 U.S.C. Section 1257(2). The Statute referred to here is not the same as the Statute pursuant to which the case was brought referred to above.

The cases believed to sustain the Court's jurisdiction are: *Largent v. Texas*, 318 U.S. 418; *Martin v. Hunter's Lessee*, 14 U.S. 304, 1 Wheat. 304, 4 L. Ed. 97; *Cohens v. State of Virginia*, 19 U.S. 264, 6 Wheat. 264; *Brunderhoff Faris Trust and Savings Co. v. Hill*, 50 S. Ct. 451, 281 U.S. 673.

QUESTIONS PRESENTED

Whether the Sunday Blue Laws applicable to Anne Arundel County are unconstitutional in that

I. They contravene the 14th Amendment to the Constitution of the United States and Articles 19 and 22 of the Maryland Declaration of Rights because they embody arbitrary and capricious classifications which unlawfully discriminate in favor of certain sales and against others.

II. The legislature in its enactment of the law has deprived citizens of one part of the State of rights and privileges which they enjoy in common with the citizens of all other parts of the State constituting classification legislation for Anne Arundel County making certain Sunday Sales a crime.

III. They are arbitrarily discriminatory and so vague as to fail to give reasonable notice of the conduct intended to be prohibited thereby.

IV. The Maryland Sunday Blue Laws applicable to Anne Arundel County violate the guarantee of freedom of religion contained in the 1st and 14th Amendments of the Constitution of the United States.

STATUTES INVOLVED

Art. 27, sec. 492.

Art. 27, sec. 521.

Art. 27, sec. 522.

Art. 27, sec. 509.

Art. 2B, sec. 28(a).

Note on other pertinent sections of Art. 2B.

Code of Public Local Laws of Anne Arundel County
Flack, 1947 secs. 384, 385.

Resolutions of County Commissioners of Anne Arundel County:

March 11, 1952.

Oct. 7, 1953.

Article 19, Constitution of Md.

Article 23, Constitution of Md.

STATEMENT OF THE CASE

These appeals are from convictions by the Circuit Court of Anne Arundel County on October 28, 1950, in seven Sunday "Blue Laws" cases which were consolidated and tried before the Court without a jury.

The Appellants, who were fined \$5.00 and costs, were employees of a company known as "Two Guys from Harrison" which, about ten days before the arrests made in these cases, opened a general merchandising store on Ritchie Highway in the Glen Burnie area of Anne Arundel County. The Appellants were convicted of making sales on Sunday, September 28, 1958 in violation of Section 521 of Article 27 of the Maryland Code, which prohibits the sale of merchandise, with certain stated exceptions, on Sunday. The Appellants, McGowan and Jozwiak, were convicted of selling a three-ring loose-leaf binder and a can of simoniz floor wax. The Appellants, Hopper, Shiflett, Schepps and Mayers were convicted of selling a stapler and staples. The Appellant Sawyer was convicted of selling a toy submarine.

Judge Benjamin Michaelson pointed out in deciding the case:

"One comment of which we were all-cognizance was mentioned this morning, that it seems to be ridiculous that you can buy beer and whiskey on Sunday and yet, unfortunately, if you had to attend a wedding or a reception or a dinner and opened up your bureau drawer and found out you didn't have an undershirt because maybe some mice had gotten in there and eaten up the last one you had and you had to run around the corner and get one so you'd be dressed for the party or occasion, why, that's against the law now, and the Almighty is going to send you to eternal damnation because you go out and buy an undershirt under all the conditions. You see, habits of people have changed, what we call Blue Laws are perhaps in the estimation of some somewhat antiquated, they don't fit in with modern conditions, and maybe we don't agree with what those laws say today, but this is the wrong forum in which to get the change."

In passing sentence, the Court said:

"Court has the unpleasant duty in this case of having to place persons, who, the Court feels, despite these charges are in the category of respectable citizens in our county, and that they are the victims of an enforcement of the law which has heretofore been lightly regarded, more or less indifferently concerned with, and has not strictly been enforced. And if you'll read that section, as I'm sure you've done, it has in its provision as a penalty a latitude of punishment because of this very kind of situation, namely, acquiescence in a course of conduct, in the mode of living and then suddenly something happens which requires an enforcement of the law. And when the law is enforced then those who are unfortunately caught in that strict enforcement become the victims of a penalty provided in the statute."

How the Federal Question is Presented

The constitutionality of the Maryland Sunday Blue Laws were raised in the course of the trial before Judge Michaelson in Circuit Court for Anne Arundel County by Melvin J. Sikes, Esq. (E. 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 Appendix to Appellants' brief). The following questions, substantially the same were raised in the Maryland Court of Appeals.

I. The Sunday Blue Laws applicable to Anne Arundel County are unconstitutional in that they contravene the fourteenth amendment to the Constitution of the United States and Articles 19 and 23 of the Maryland Declaration of Rights because they are arbitrarily discriminatory and so vague as to fail to give reasonable notice of the conduct intended to be prohibited thereby.

II. The Anne Arundel Blue Laws embody arbitrary and capricious classifications which unlawfully discriminate in

favor of certain sales and against others; and the pattern of Sunday legislation in Anne Arundel County has been so eroded by arbitrary special exceptions that the legislation no longer bears any reasonable relation to the public health, welfare, safety or morals.

III. The Sunday Blue Laws applicable to Sunday sales in Anne Arundel County are constitutionally vague.

IV. The Maryland Sunday Blue Laws applicable to Anne Arundel County violate the guarantees of freedom of religion contained in the 1st and 14th Amendment of Constitution of the United States.

"(Mr. Sykes). May it please the Court, in making this constitutional argument, I don't mean to waive our motion for postponement or other points, I'm just doing the best I can under the conditions we have, but I think it's instructive in this case to give Your Honor the general background of these statutes, specific statutes I'm going to raise. In the beginning we had one Sabbath breaking law, that was Section 492, that prohibited doing work or bodily labor on Sunday except for works of necessity and charity. The Court of Appeals in another day, in the Levering case, as the State's Attorney has indicated, sustained that; sustained it on the theory that the State has an interest in making sure that its citizens rest at least one day a week; that reasoning is entirely inapplicable to the laws that exist today.

(Court) Well, now, you better be careful and choose your words consistent with what you mean, if you're talking now civilly now, that's one thing, if you're talking now from the religious side of it you may have—

(Mr. Sykes). I'm talking from the point of view, the way these laws have finally shaped up they don't secure any interest in having anybody rest on one day a week because what happened after the Section 492 was construed and upheld by the Court of Appeals was this, as Your Honor knows, there was a succession of approaches to the legislature on behalf of specific busi-

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ness interest and localities, and exception after exception was carved out of this general statute. You have certain sport exhibitions allowed, you have motion pictures allowed—

(Court) Skating rink, bowling alley, and all the others, football, baseball.

(Mr. Sykes) Right, then you have general alcoholic beverage law, which permits the sale of beer on Sunday, which is a much more degrading thing than the sale of a cement trowel to putter around in your private garden on Sunday. Now, in addition to that, there is a special law in Anne Arundel County which applies to motion picture theatres, and there is Section 509, which I'll comment on in a minute, finally, there was a Section 521 under which the indictments are laid here, I mean, under which the warrants are laid here, in which there are several exceptions, even to the sales provision. Now, the sale provision prohibits sale in terms, but then it allows retailers to sell tobacco, cigars, cigarettes and candy and soft drinks, ice cream, milk, bread, fruit, gasoline, oils and greases, it's all right to have people travel up and down on Sunday and not stay home and work, it also doesn't apply to apothecaries, and it doesn't apply to newspapers and periodicals. In addition to that, finally, the bathing beaches and amusement parks sought an exemption for themselves, but they went further than that. Your Honor, and I'm not sure that Your Honor has completely understood the gist of our argument on this point, Section 521 on its face prohibits the sale of certain articles, we say, that on its face it is a discrimination in favor of what it permits to be sold, and a discrimination against what it refuses.

(Court) Isn't this the same argument that applies so frequently to local option and the sale of intoxicating beverages and different license fees that prevail in different various sections of this county?

(Mr. Sykes) No sir.

(Court) Some sections tax cigarettes and others don't tax cigarettes and so forth and so on.

(Mr. Sykes) No sir, 521 is a state wide statute on its face, and 521 as modified by 509 applies in Anne Arundel County and applies uniformly, geographically in Anne Arundel County.

(Court) That wasn't done by Anne Arundel County, that was done by the state's general assembly.

(Mr. Sykes) I know, but we have to ask ourselves—

(Court) It's not like, for instance, you attempt to have baseball in Baltimore some years ago and the City Council passed an ordinance and allowed the playing of baseball and then it was found invalid. You have to figure the source from which this legislation comes.

(Mr. Sykes) What I'm saying is this, Your Honor, this legislation comes while; it comes from the legislation it applies to Anne Arundel County, but you have to take the legislation as a whole, and you have to try to square it with the constitutional requirements for legislation. If the legislature, for example, had passed a law saying that every person in Anne Arundel County who has red hair is liable to immediate imprisonment for ten days, obviously, that kind of law can't stand because it's an arbitrary and capricious law on its face, it's not a reasonable classification. Now, look at what they have done here, and this is the important thing about this, Section 521 prohibits certain sales, Section 509 says, as far as Anne Arundel County is concerned the prohibition of these sales made by 521 has to be modified, and Section 492, 521 and 522 of this Article are repealed, in so far as—

(Court) Now, in so far as what?

(Mr. Sykes) In so far as they prohibit operating bathing beaches, that's not our case.

(Court) What's the next thing?

(Mr. Sykes) In so far as, they prohibit amusement parks and dancing saloons, that's not our case. I can pass over the question of whether it's an arbitrary discrimination to permit a dancing saloon and not to permit us to sell a cement trowel.

(Court) Put a peg right there for a minute — in so far as the niceties of these various situations are concerned, if you approach this from the violation of the Sunday law, what is there that strikes you more forcibly than the fact that the Court of Appeals has said, that the sale of whiskey and beer on Sunday is valid, where would you get a more specific declaration as to what may be permitted on Sunday.

(Mr. Sykes) What the Court of Appeals was saying was—

(Court) Article 2B superseded.

(Mr. Sykes) Yes, the sale of whiskey and beer was valid, but we now have the question, if the statute authorizes the sale of beer and whiskey, can it forbid the sale of a cement trowel on a reasonable basis?

(Court) What you're trying to say to the Court is, is that the equity of the situation ought to be that if you can sell whiskey and beer on Sunday, why can't you sell some of these less harmful or less destructive, less demoralizing items or articles, but this Court doesn't make the law, this Court doesn't legislate.

(Mr. Sykes) But the Court enforces the prosecution, if Your Honor pleases, that the laws be reasonable and not arbitrary.

(Court) Yes, but when we have a law that is, as far as we can determine, that presumably is a valid law, until it's declared to be otherwise, and that's this Court's function.

(Mr. Sykes) Your Honor is the Court and the question is before you.

(Court). But the Court cannot determine what laws shall be enforced and what laws shall not be enforced, that's not the Court's province.

(Mr. Sykes) Your Honor, may I say on that point, just this and then I will leave. This Court has no power, as Your Honor has said, to decide whether a statute passed within constitutional limits is wise or not, but becomes a point when a statute, as Your Honor mentioned in a discussion in the chambers, on its face makes

distinctions which are ridiculous, and when that occurs the statute is arbitrary and passes the constitutional limits and the Court must strike it down because it sustains statutes passed and the exercise of the police power only when they are not arbitrary and unreasonable. I can't say any more than that.

(Court) Court didn't use the word arbitrary.

(Mr. Sykes) Court used the word ridiculous.

(Court) Ridiculous, that's right, and it commented on it right now. The Court's personal opinion sometimes is not what the law says it ought to be. Court's personal views sometimes are entirely different in what it has to decide, but that's no concern of ours, with what the Court's personal opinion is, it's what the law is, that's the thing we're concerned with, what is the law.

(Mr. Sykes) Well, the next point on this 509 which I wanted to make, Your Honor, was the continued reading, the respects in which Section 521 were repealed by this statute. The third respect is, that it's repealed in the case of the sale or selling at retail of any merchandise essential to or customarily sold or incidental to the operation of the aforementioned occupations. Now, that does not mean that the merchandise has to be sold at a bathing beach, it doesn't say that, it says, that the merchandise has to be of the kind of merchandise that is customarily sold at a bathing beach. Now, Your Honor may know about bathing beaches, and about the fact that you can buy almost anything under the sun at some of these large amusement parks in Anne Arundel County. A person who is faced with the problem of what, if anything, he should sell on Sunday has Section 509 and Section 521 before him as if they're written as part of a single section. Section 521 says you can't sell on Sunday and names certain exceptions; and then there is a further exception, repealing 521, which applies to articles customarily sold in all these various institutions, including dancing saloons and Lord knows what. Now, the question is

then, what does 521, as amended, repealed by 509 really prohibit, does anybody know sufficiently, with sufficient definiteness when he sells an article on Sunday that he is violating the sections of 521, when the statute itself has used almost impossibly vague standards, saying that oh, no, you don't violate this if you sell what's customarily sold at all of these things. What is the retailer supposed to do, go take the census of what's sold at all these things? Your Honor could take judicial notice that there is a tremendous amount of material that's sold at these various institutions, and I say to you that the statute 509 has provided an exception as repealed, 521, to such a great and broad extent that when you construe the statute in its entirety it does not meet the requirements of reasonableness, certainty and definiteness that a criminal statute must meet, and therefore it is violative of the due process clause.

(Court) The Court can say in response to it is simply this: if in these cases any sales were made as provided in Section 509 that exception would apply, but as the Court understands it, these are not prosecutions under Section 509, but under Section 521, it doesn't say anything about a number of things that could be said. Now, you asked the Court the question how can you tell from Section 521 what ought to be sold, it says what can be sold, the Court didn't put those words into that act, the General Assembly in the State of Maryland set that up as Section 521 of Article 27, passed by the majority of the legislators of this state, whether wisely or unwisely, that's not for the Court to say. Counsel well knows the wisdom of legislature is not the Court's business, that's the business of the representatives of the people in the General Assembly.

(Mr. Sykes) I hesitate to repeat myself, but as this case will undoubtedly wind its way up the judicial path, I want to make it perfectly clear in the record what my position on this is, so that there can be no misunderstanding. I am under the apprehension that Your Honor does not comprehend the text of our argu-

ment under 509, and for this reason and his reasons from the bench that 509 has nothing to do with this case because this is not a prosecution under 509.

(Court) Court didn't say that at all. The Court says that the exception doesn't effect 521 in so far as 521's applicability to the charges in this case are concerned, that's what the Court is saying. Court knows that that is an exception, the Court knows what happened when that legislation was passed, so you can't say that Court doesn't know anything about it, maybe I can't comprehend it, but I understand it.

(Mr. Sykes) Well, I misunderstood I thought Your Honor said that if this were a prosecution under 509, it may be the 509 language would have significance.

(Court) Court has a few more gray hairs than you do, Mr. Sykes, and knows a little bit more about the history.

(Mr. Sykes) That's perfectly all right, sir, I just wanted to be sure.

(Court) I've lived sixty some years and I believe I know a little bit about this county.

(Mr. Sykes) Well, those are the major points that we have to make, the other point which is also important I'll touch on just briefly, and that is the church and state problem. The Court of Appeals upheld the labor statute as a civil regulation, the Supreme Court hasn't passed on it in over a hundred years and this Court is bound by what the Court of Appeals says, that is for the time being. We make the point in order to preserve it for higher review; the point here, however, is that the rationale under which the earlier statute was upheld cannot be invoked today as a matter of civil law for the upholding of the crazy quilt pattern of statutes which is before the Court today. These statutes before the Court today do not uphold or promote any interest that society may have in the provision of a day of rest for the people of this state. If there were only the statutes that there had been in the first place a general statute, generally applicable to all

work and labor in Anne Arundel County the Levering case would apply, but today with the pattern of statutes which permits you to spend your Sunday in a beer saloon, or dancing saloon to buy anything you want to buy that's customarily sold at bathing beaches, picnic groves or amusement parks and the like, to go bowling, to indulge in all sorts of wordly recreation, and not even recreation, that pattern of statutes can be upheld on the basis that the legislature in its wisdom has provided reasonable means of sanctioning the public interest in a day of rest, and so taking all of these various points, with regard to the conflicts and contradictions and the ridiculousness of the statutes, those things go not only to the question of discrimination and arbitrariness and the like, but they go to the question of religious freedom because the statutes as they are today, as I say, do not or cannot be sustained on the same basis that the earlier general statute was sustained, and so we ask, if Your Honor please, on all these grounds that the motion to dismiss the warrants be granted, and in order to keep the record clear we haven't had a ruling on any of our motions, we would like to have leave to get this up the best way we can within a reasonable time and file a written motion *nunc pro tunc*, so as to comply with the rule requiring the motion being right.

(Court) Court explained to counsel, at least commented to counsel in the chambers that it would have the privilege of filing as you're required by the rules all motions in writing that are necessary to be presented as have been done earlier in this case. In other words, motion for a postponement, motion for the prosecution be dismissed and motion for removal of the case, motion for prosecution not being filed in thirty days, and motion that the Sunday law violates the Maryland Constitution, and the motion to have the exhibits filed, which counsel will have to do and the Court has agreed to that, if there are no further arguments the Court will proceed to rule on the motions. As to the motion for postponement, the Court regrets

very much that it had to take the position it did in denying the request of eminent counsel for a postponement, but because of what has previously occurred prior to present counsel's association with themselves in the case, up until noon of October the 27th, other counsel representing the same parties had been in contact and communication with the Court over a period of more than a week, and the Court had at least one week ago notified counsel at that time there would be no postponement of these cases today, as far back as October the 2nd. The record shows these parties knew that the machinery of the law and reference to the alleged violations thereof had begun to move, and that there was an attempt to enforce these laws, and that prosecutions were to fail accordingly. So that, the litigants themselves cannot complain to this Court that they have not had adequate time within which to make due, proper and full preparation of their defenses in these cases. And the Court knows, because it has talked with other counsel that they went from one lawyer to another and then finally to you gentlemen, who represents them today, primarily for the purpose of getting these cases postponed, not by counsel but by them as an objective, and the Court feels that it owes a duty, with due respect to the law, that such tactics should not be sanctioned or approved by the Court, consequently, much as it regrets to do it, it will have to overrule the motion for a postponement. As for the motion for the prosecution to be dismissed on the grounds presented, namely, upon warrant, where the case is tried upon warrant and not on information or indictment, the Court feels that, procedurally, as far as it's able to analyze the picture there's nothing wrong with the manner in which these cases have been processed, and therefore, that motion will be overruled. As for the motion for removal of the cases, the Court doesn't feel that there's been any undue notoriety or prejudice prevalent on the part of any newspaper items that may have appeared, which as far as the Court's been able to observe, any narration or news items of what has taken place in the county, and that motion

will be overruled. The other motions, the Court feels, are not substantial from the Court's analysis of the situation, all motions will be overruled. Counsel may have an exception to the Court's ruling and file whatever papers they desire to file.

(Mr. Sykes) I'd like to complete the record and make one more motion, I would like the record to show that the jury was sitting in the court room when the Court made the remarks it did coming from the Court's own knowledge, apparently, as to its reasons for granting the postponement, particularly, the Court's remarks about the tactics of the defendants individually, and the need for respect for the law and the like, and I would urge that the case be postponed on the further ground that the remarks made by the Court to this particular jury panel cannot help by having been prejudicial to the interest of these defendants.

(Court) Motion is overruled.

(Mr. Duvall) I understand from Mr. Mundy that each of the defendants elect a trial before the Court, and at this time I don't believe I have made the motion earlier when these cases were called, the State at this time moves to consolidate these cases for the purpose of trial and ask defense counsel that that motion be made as initially when I called the case, so that your motions which you have argued apply to all of them in a consolidated form.

(Mr. Sykes) I would like the record to show too, if Your Honor pleases, that the election for a trial by the Court is not a completely free election, but was made because of the pressure in counsel's mind induced by the failure to grant the motion for removal, and by the failure to grant the motion for postponement based upon the remarks made to this jury. We do not mean by electing a court trial under these circumstances to waive those motions in any way, we merely try to do the best with what we have without acquiescence in any way.

(Court) Court can ask you, gentlemen, how you want these cases tried, before the Court or Jury?

(Mr. Mundy) May it please the Court, in view of Your Honor's refusing our motion to remove the cases, we feel obligated to accept a court trial.

(Court) Let the record show then, in these various cases 4263, 4264, 4265, 4266, and 4267, and 4268, and 4270 election of court trials has been made by counsel. Does the Court understand, gentlemen, these cases are consolidated for trial by agreement?

(Mr. Mundy) By agreement.

(Court) Let the record show.

(Mr. Duvall) May it please the Court, before proceeding with the first witness I wonder if I may speak with other counsel in the other cases to find out if this jury will be needed today?

(Court) Mary Margaret McGowan, stand up, Court will have the Clerk read the charge to you.

(Clerk read the warrant to the traverser.)

(Clerk) How say ye, are you guilty or not guilty?

(Mary Margaret McGowan) Not guilty."

THE QUESTIONS ARE SUBSTANTIAL

The Appellants respectfully represent that the Sunday Blue Laws of Anne Arundel County, as applying specifically to that County embody arbitrary and capricious classifications which unlawfully discriminate in favor of certain sales and against others. The original Maryland Sunday Blue Laws prohibited all bodily labor on Sunday excepting only works of charity and of necessity. Article 27 Section 492 Annotated Code of Maryland, 1957 Edition. The constitutionality of that Statute has been upheld by the Court of Appeals of Maryland in *Judefind v. State*, 78 Md. 510; *Levering v. Williams*, 134 Md. 48 and *Ness v. Supervisors*, 162 Md. 529. The instant prosecutions, however, were not brought under the general Sunday Blue Laws and reflected by Section 492 of Article 27, as aforesaid, but under Article 27, Section 521 of the aforementioned Annotated Code of

Maryland, specifically dealing with Sunday sales. That Section provides that no person in the State may sell, dispose of, barter, deal in or give away any articles of merchandise on Sunday, or if the following stated exceptions: Retailers may sell and deliver tobacco, cigars, cigarettes, candies, sodas, soft drinks, ice cream, ices and other confections, milk, bread, fruits, gasoline, oil, grease. The Statute also exempts periodicals, newspapers and apothecaries. Although the said Section 521 purports, on its face, to be applicable to the entire State of Maryland as a general law, nevertheless the Legislature of the State of Maryland in 1941 passed Section 509 of Article 27 which repealed, among others, said Section 521 so far as it is applicable to Anne Arundel County, Maryland, to the extent that said earlier Statute prohibits the operating on Sunday of any bathing beach, bath house, amusement park, dancing salon, picnic groves, amusements, games, amusement devices, entertainments, shows and the hiring or renting of boats, tables, chairs and beach umbrellas. *The said Section 509 as enacted in 1941 by the Legislature also specifically permits the sale or selling at retail of any merchandise essential to, or customarily sold at or incidental to the operation of the aforementioned occupations or businesses. (Emphasis supplied.)* Inasmuch as these exceptions have been provided for the residents of Anne Arundel County, without the same privileges being afforded to other residents of the State of Maryland, in its other Counties and Baltimore City, these Appellants respectfully contend that such Statute is arbitrary and discriminatory.

The Plaintiffs contend that this Act is unconstitutional in that it is discriminatory and in violation of the equal protection clause of the 14th Amendment of the Federal Constitution and Article 23 of the Maryland Declaration of Rights.

The statute adopted and known as the Sunday Blue Laws was a general law. A general law is defined as one which the provisions embrace the whole of a subject and the subject matter is of common interest to the whole State. The uniformity that is required is to prevent the granting to any person or class of persons the privileges or immunities which upon the same terms do not belong to all persons. *Sutherland Statutory Construction* (3rd Ed. Horach) Sec. 2102.

The appellants contend that the Sunday Blue Law as applied to Anne Arundel County is illusory. There is no apparent difference in a sale of an item whether it be in one County or another. If an item cannot be sold, it should not be permitted to be sold anywhere in the State. If it is permissible to sell an item on a bathing beach, then this item should be sold at any business establishment throughout the State. The Power of the Legislature to restrict the application of Statutes to localities less in extent than the entire State is not unlimited. It cannot be used to deprive the citizens of one part of the State of the rights and privileges which they enjoy in common with the citizens of all other parts of the State, unless, there is some difference between the conditions in the territory selected and in the conditions in the Territory not affected by the Statute sufficient to afford some bases however slight for classification. *Md. Coal & Realty v. Bureau of Mines*, supra, Opinion of Atty. General of Md., April 30, 1959.

Persons situated alike must be treated alike. *Maryland Coal v. Bureau of Mines*, 69 A. 2d 471, 193 Md. 627; *Dasch v. Jackson*, 170 Md. 251, 183 A. 534; *Reid Development Corp. v. Passippang-Troy Hills T. P.*, 10 N.J. 229, 89 A. 2d 667 (1952); 12 Am. Jur., Sec. 557, p. 251. *In Re: Van Horne*, 74 N.J. Eq. 600, 70 A. 986 (Ch. 1903); *Galloway v. Wolfe*, 117 Neb. 824, 223 N.W. 1, 62 A.L.R. 637 (Neb. 1929); *Sarner v.*

Union T. W., 151 A. 2d 208. In the latter case the Superior Court of New Jersey decided that the Sunday closing law prohibiting the sale of certain merchandise on Sunday and providing criminal penalties for its violation by excluding from its operation the counties of Atlantic, Cape May and Ocean arbitrarily and unlawfully discriminated between members of the general public and there was no real and true basis for the classification made.

Arbitrary selection can never be justified by calling it classification. The Equal protection required by the Fourteenth Amendment forbids this. *Gulf C. & S. Fr. Co. v. Ellis*, 165 U.S. 150, 17 S. Ct. 225, 41 L. Ed. 666 (1897). In *Harford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U.S. 459, 462, 57 S. Ct. 838, 81 L. Ed. 1223, 1226 (1937), *Jeffrey Mfg. Co. v. Blogg*, 235 U.S. 576, *Lindsley v. Natural Carbonic Gas*, 220 U.S. 61, it was said that discriminations are not to be supported by mere fanciful conjecture and that they cannot stand as reasonable if they offend the plain standards of common sense. See *Colgate v. Hervey*, 296 U.S. 404.

The Attorney General of Maryland when called upon to rule on the constitutionality of House Bill No. 265 which sought to establish minimum Retail Prices for whiskey but exempted Montgomery County because of its geographical location, stated in his Opinion April 30, 1959 the bill was unconstitutional.

A similar exception was invalidated by the Florida Court of Appeals in the case entitled *Anderson v. Antonucci*, 62 Fla. 25.

There have been many State Court decisions regarding a wide variety of unexplainable and irreconcilable classifications and exceptions to the Sunday Sale Laws. *Mosco v. Dunbar*, 309 P. 2d 581 (Colo. 1957); *Denger v. Bank* (1899),

26 Colo. 530, 58 P. 1089; *Mergren v. Denver*, 104 P. 395, 46 Colo. 385; *Gundaker Motors v. Cassert*, 127 A. 2d 566 (N.J. 1956). But in most of these cases the classifications were uniformly affected wherever situate within the State.

It appears from the cases that in order to be held constitutional a classification must not only be reasonable and not arbitrary but must rest upon a difference having a fair and substantial relation to the object of the Legislation. *Anderson v. Antonacci*, 62 Fla. 25, 62 So. 25; *Old Dearborne Distributing Co. v. Seagram Distillery Corp.*, 299 U.S. 183; *Colgate v. Hervey*, 296 U.S. 404, 422-423; 56 Sup. Court 253, 102 A.L.R. 54.

Maryland has held, in many cases, that the Legislation may not, under the cloak of Police power, exercise a power forbidden by the Constitution. *Dasch v. Jackson*, 170 Md. 251; *American Coal Co. v. Allegany County Commissioners*, 59 Md. 185; *Chesapeake & Potomac Co. v. State Board of Forestry*, 125 Md. 666. *Md. Coal & Realty v. Mines*, 39 A. 2d 471.

Various reasons have been given for this type of special classification Legislation being entered upon the Statutes of the various States. See 12 Rutgers Law Review 505 (1958).

To permit the sale of intoxicants and the operation of slot machines, pin ball machines and bingo on Sunday, as well as the other exceptions which the Statute here in question permits, is in effect to change the nature of the law from one of a general closing with exceptions to a law aimed at certain classes of businesses with a general exception to others, which, in effect, grants a special privilege to the excepted legal class while without legal excuse denying them to others. *Broadbent v. Gibson*, 105 Utah 53, 140 P. 2d 939.

The Trial Court below admitted that the Legislation in question was "ridiculous", and your Appellants contend that permitting the excepted sales is the very antithesis of the spirit of Sunday observance while prohibiting sales and conduct which by any test are incomparably more innocuous of the sales and activities permitted. Obviously such discriminatory Legislation must lead to discriminatory enforcement.

Section 509 of Article 27 of the aforementioned Annotated Code of Maryland permits the sale or selling of any novelties, souvenirs, accessories or other merchandise essential to or customarily sold at, or incidental to the operation of bathing beaches, bath houses, amusement parks or dancing salons. The language of the Statute permits the sale of such merchandise throughout Anne Arundel County generally. It cannot be imagined that the Legislature intended to permit sales in a dancing salon of the same articles which are prohibited elsewhere, and yet the language of the Statute would imply otherwise. A Statute which permits one type of outlet to sell the same commodities which it prohibits another outlet from selling has generally been held unconstitutional. *Mt. Vernon v. Julian*, 369 Ill. 447, 17 N.E. 2d 52; *Allen v. Colo. Springs*, 101 Colo. 498, 75 P. 2d 141; *Ellicott v. State*, 29 Ariz. 389, 242 P. 340.

The said Section 509 of Article 27 is obviously extremely vague. One could not determine what merchandise is customarily sold at bathing beaches, bathhouses, amusement parks, dancing saloons, etc. without making a survey of those particular establishments and with the ever widening scope of business there is always the possibility that although a particular item is not sold at one of those establishments today that it may nevertheless become standard merchandise with it tomorrow. The fact that Section 509

gives so much leeway to the operators of the permitted establishments in the sale of merchandise on Sunday aggravates the discriminatory character of the Legislative pattern and reinforces your Appellant's argument on this point.

The question of the constitutionality of the Sunday Blue Laws has been presented to the Supreme Court of the United States in the past, among others, in the following cases: *Hemmington v. Georgia*, 163 U.S. 299, 41 U.S. (14 Ed.) 166; *Petit v. Minn.*, 177 U.S. 164, 20 S. Ct. 666, 44 U.S. (L. Ed.) 716; *Joe Towerly v. State of N. C.*, 347 U.S. 925 (1954); *Sam Friedman v. New York*, 341 U.S. 907.

The problem has also been presented on the Federal District Court level in *Swann v. Swann*, 21 Fed. 299; and *Crown v. Kosher Super Market of Mass. v. Gallagher*, U.S. District Court of Mass. decided May 18, 1959 in 27 Law Week 2614.

It is respectfully contended that the enforcement of the Sunday Blue Laws as applicable to Anne Arundel County violates the guarantee of freedom contained in the 1st and 14th amendments of the Constitution of these United States.

No citizen can be required by Law to do, or refrain from doing, any act upon the sole ground that it is a religious duty. The idea that religious faith and practice can be and should be enforced by physical force and penal statutes has no place in the American Doctrine of Government. The State cannot be the keeper of the religious conscience of its citizens. The State is to protect all religions but espouse none. Every person is individually answerable to his God for his faith and his works and must therefore be left free to imbibe and practice any faith he chooses so long as he does not interfere with the rights of his neigh-

ber. *Everson v. Board of Education*, 330 U.S. 1; and *McCullum v. Board of Education*, 33 U.S. 203.

CONCLUSION

For all of the reasons hereinabove cited, it is respectfully submitted that the questions raised by this Appeal are substantial and of public importance and should be respectfully received by this Honorable Court.

It is submitted that the Decision of the Court of Appeals of Maryland is contra to the Constitution of the United States.

Respectfully submitted,

HARRY SILBERT,

A. JEROME DIENER,

SIDNEY SCHLACHMAN,

J. SEYMOUR SUREFF,

For Appellants.

APPENDIX A

STATUTES AND RESOLUTIONS INVOLVED

ARTICLE 27, 492 — Working, on Sunday; Permitting Children or Servants to Game, Fish, Hunt, Etc.

No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (work of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting or unlawful pastime or recreation; and every person transgressing this section and being hereof convicted before a justice of the peace shall forfeit five dollars, to be applied to the use of the county.

ARTICLE 27, Sec. 521 — Sale, Etc., of Merchandise on Sunday; Excepted Articles; Second and Subsequent Offenses; Revocation of License.

No person in this State shall sell, dispose of, barter, or deal in, or give away any articles of merchandise on Sunday, except retailers, who may sell and deliver on said day tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice cream, ices and other confectionery, milk, bread, fruits, gasoline, oils and greases; and any person violating any one of the provisions of this section shall be liable to indictment in any court in this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum of not less than twenty nor more than fifty dollars, in the discretion of the court, for the first offense, and if convicted a second time for a violation of this section, the person or persons so offending shall be fined a sum not less than \$50 nor more than \$500, and be imprisoned for not less than 10 nor more than 30 days, in the discretion of the court, and his; her or their license, if any was issued, shall be declared null and void by the judge of said court; and it shall not be lawful for such person or persons

to obtain another license for the period of twelve months from the time of such conviction, nor shall a license be obtained by any other person or persons to carry on said business on the premises or elsewhere; if the person, so as aforesaid convicted, has any interest whatever therein, or shall derive any profit whatever therefrom; and in case of being convicted more than twice for a violation of this section, such person or persons on each occasion shall be imprisoned for not less than thirty nor more than sixty days, and fined a sum not less than double that imposed on such person or persons on the last preceding conviction; and his, her on their license, if any was issued, shall be declared null and void by the court, and no new license shall be issued to such person or persons for a period of two years from the time of such conviction; nor to any one else to carry on said business where he or she is in anywise interested; as before provided for the second violation of the provisions of this section; all the fines to be imposed under this section shall be paid to the State. This section is not to apply to apothecaries and such apothecaries may sell on Sunday drugs, medicines and patent medicines as on week days; and this section shall not apply to the sale of newspapers and periodicals.

ARTICLE 27. Sec. 522 — Keeping Open or Using Dancing Saloon, Opera House, Tenpin Alley, Barber Saloon or Ball Alley on Sunday.

It shall not be lawful to keep open or use any dancing saloon, opera house, tenpin alley, barber saloon or ball alley within this State on the Sabbath day, commonly called Sunday; and any person or persons, or body politic or corporate, who shall violate any provision of this section, or cause or knowingly permit the same to be violated by a person or persons in his, her or its employ shall be liable to indictment in any court of this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum not less than fifty dollars nor more than one hundred dollars, in the discretion of the court, for the first offense; and if convicted a second time for a violation of this sec-

tion, the person or persons or body politic or corporate shall be fined a sum not less than one hundred nor more than five hundred dollars; and if a natural person shall be imprisoned, not less than ten nor more than thirty days in the discretion of the court; and in the case of any conviction or convictions under this section subsequent to the second, such person or persons, body politic or corporate shall be fined on each occasion a sum at least double that imposed upon him, her, them or it on the last preceding conviction; and if a natural person, shall be imprisoned not less than thirty nor more than sixty days in the discretion of the Court; all fines to be imposed under this section shall be paid to the State.

ARTICLE 27, Section 509 — Beaches, Amusement Parks, Picnic Groves, Etc., in Anne Arundel County.

It shall be lawful to operate, work at, or be employed in the occupations of operating any bathing beach, bathhouse, amusement park, dancing saloon, the sale or selling of any novelties, souvenirs, accessories, or other merchandise essential to, or customarily sold at, or incidental to, the operation of the aforesaid occupations and businesses, at retail, picnic groves, amusements, games, amusement rides, amusement devices, entertainments, shows and the hiring or renting of boats, tables, chairs, beach umbrellas, on the first day of the week, commonly called Sunday, within Anne Arundel County, and §§492, 521 and 522 of this article are repealed, in so far and to the extent that they prohibit the operating of and or the working of or employment of persons in the operation of any bathing beach, bathhouse, amusement park, dancing saloon, the sale or selling at retail of any merchandise, essential to or customarily sold or incidental to the operation of the aforesaid occupations or business, picnic groves, amusements, games, amusement rides, amusement devices, entertainments, shows, and the hiring and renting of boats, tables, chairs, beach umbrellas, on the first day of the week commonly called Sunday, in Anne Arundel County.

ARTICLE 2B, Section 28 — Anne Arundel County.

(a) *Special Sunday licenses.* — (1) Notwithstanding any other provision of this article, no license for sale of alcoholic beverages issued by the board of license commissioners for Anne Arundel County (except "special license" provided for in §22 of this article) shall be deemed to nor shall it permit or authorize the holder thereof to sell any alcoholic beverages in Anne Arundel County after 2 A.M. on Sundays, except as hereinafter provided.

(2) Any person holding a license for the sale of alcoholic beverages in Anne Arundel (except persons holding any Class BP, WP, LP, or LT license, "Package Goods — off sale license," "six day tavern license," or "special licenses") issued by the board of license commissioners of Anne Arundel County, shall upon application made as for new licenses and approval thereof by the board of license commissioners for Anne Arundel County, as provided for by Sections 60 and 67 (c) of this article, be issued a license to be known as a "special Sunday license," upon payment of the fee therefor as provided herein.

(3) Such "special Sunday license" shall authorize the holder thereof to sell alcoholic beverages of the same kind, and subject to the same limitations as to hours, alcoholic content of the beverages to be sold thereunder, restrictions and provisions, as govern such other license for the sale of alcoholic beverages, issued to and held by the holder of such "special Sunday license," on each Sunday. No "special Sunday license" shall be issued to any person who does not hold an alcoholic beverage license of some other class issued by the board of license commissioners for Anne Arundel County.

(4) An annual fee of ten dollars (\$10.00) shall be paid for each "special Sunday license" issued. "Special Sunday licenses" shall be issued by the clerk of the Circuit Court for Anne Arundel County, who shall retain a fee of fifty cents (50c) for the issuance of each such license.

(5) "Special Sunday licenses" may be renewed in the same manner as other licenses for the sale of alcoholic beverages under this article. "Special Sunday licenses"

issued under the provisions of this section shall not be construed to be "special licenses" under the provisions of Section 68 of this article.

(6) The granting of a "special Sunday license" in addition to a license of any other class, to the same licensee, shall not be deemed to be in conflict with the provisions of Section 41 of this article.

(7) Whenever any other license held by the holder of a "special Sunday license" is suspended or revoked, in such case the "special Sunday license" of such licensee must likewise be suspended or revoked.

(8) Nothing in Section 46 of this article shall be construed to prohibit any person who holds any other class of alcoholic beverage license issued by the board of license commissioners for Anne Arundel County from obtaining a "special Sunday license".

(9) This section shall apply to the first, second, third, fourth, fifth, seventh and eighth districts of Anne Arundel County only.

(10) This section shall not apply to beach and amusement park licenses issued in Anne Arundel County.

Note: For licensees in Anne Arundel County entitled to special Sunday licenses, see the following sections of Art. 2B: 9 (Beer License, Class BR, restaurant with music, dancing and other legal entertainment); 14 (Beer and Light Wine, Class WR, hotels and restaurants with music, dancing and other legal entertainment); 15 (Beer and Light Wine, Class WC, clubs); 16 (Beer and Light Wine, Class WT, on sale, taverns without music, dancing, etc., and WTM, on sale, taverns with music but without dancing); 19 (Beer, Wine and Liquor, Class LR, on sale, restaurants with music but without dancing, and Class LRD, on sale, restaurants with music, dancing, etc.); 20 (Beer, Wine and Liquor, Class LC, Clubs); 21 (Beer, Wine, Liquor, Class LTM, tavern open seven days weekly, with music but without dancing).

Code of Local & Public Laws of Anne Arundel County
(Flack, 1947) Sections 384, 385 as Enacted By Chapter
321 of the Acts of 1943.

384. The County Commissioners of Anne Arundel County when exercising the powers vested in them to issue licenses as authorized by Section 383 are authorized and empowered to designate the kinds and types of carnivals, circuses, shows, amusement rides, and amusement devices which may be operated in Anne Arundel County, and make regulations for the operation thereof in Anne Arundel County under the said licenses, and may designate kinds and types of carnivals, circuses, shows, amusement rides, and amusement devices which may not be operated in Anne Arundel County, as detrimental to the health, morals and safety of the people and property of Anne Arundel County.

385. The County Commissioners of Anne Arundel County are hereby authorized and empowered to permit the issuance of any prize or award in the operation of any such carnival, circus, show, amusement ride, or amusement device licensed under authority of Sections 383 and 384 as an award or prize for skill or score attained.

ANNE ARUNDEL COUNTY AMUSEMENT DEVICE LICENSES

Resolution adopted by the County Commissioners of Anne Arundel County at the regular meeting held on the 11th day of March 1952 repealing all prior resolutions and regulations relating to the licensing and regulation of amusement devices and amusements operated in Anne Arundel County and adopting regulations and licenses in lieu thereof.

WHEREAS enactment of Chapter 321 of the Acts of 1941, Chapter 321 of the Acts of 1943 and Chapter 1013 of the Acts of 1945 of the General Assembly of Maryland, the County Commissioners of Anne Arundel County have been authorized to license and make regulations for the operation of carnivals, circuses, shows, amusement rides, amusement devices and other types of meets and events in Anne Arun-

del and to designate the kinds and types thereof which may not be operated in the said County.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY, in regular session assembled, this 11th day March 1952, that

(a) the resolutions of the County Commissioners of Anne Arundel County heretofore adopted establishing license fees and regulation for the operation of amusement devices, carnivals, and amusement games be and the same are hereby repeal effective April 30th, 1952, and in lieu thereof the following regulation and license fees are hereby established effective May 1, 1952, pursuant to the authority vested in the County Commissioners of Anne Arundel County:

(1) It shall be unlawful to operate any carnival, amusement devices, game or event for which licenses are hereby established without having procured any such license within the First, Second, Third, Fourth, Fifth, Seventh or Eighth Election Districts of Anne Arundel County.

(2) It shall be lawful to obtain the following classes of licenses to be issued by the Clerk of the Circuit Court of Anne Arundel upon payment of fees hereinafter set forth plus \$1.00 Clerks fee for each license issued.

CLASS A. Licenses — CIRCUSES \$50.00 per day.

Special regulations relating to the operation of Circuses:

No such license shall permit the operation of any circus on any Sunday and the operation of any circus on any Sunday is hereby prohibited.

A circus license shall permit the presentation of performance or by persons and animals, but shall not permit the operation of any gaming or amusement devices in which the patrons of the licensed premises participate.

CLASS H Licenses — PIN BALL GAMES — CONSOLE DEVICES
\$275.00 per annum

Each such license shall authorize the operation of one such device and shall include all types of "pin ball games" and "console devices" operating on either the "spinner type" or "reel type" principle, but shall not permit the operation of any "slot machine of the so-called one arm type" under such license.

It shall be lawful for such licensed device to pay out as an award any token, merchandise, ticket, coin, prize or other thing of value.

No such license shall be issued for any such device requiring a coin of greater value than 5¢ in its operation.

No more than eight Class H Licensed devices may be placed in any one location; all devices over four shall be placed only upon the written permission of the County Commissioners of Anne Arundel County or their authorized agent.

CLASS L Licenses — BEACH AND RESORT QUALIFYING
LICENSE \$300.00 per annum

Each such license shall authorize the holder thereof to purchase as many Class M licenses for the use in any one location as may be desired.

No Class L license shall be issued except to bona fide operators of bathing beaches located directly on the shores of the Chesapeake Bay and or its tributaries, which beaches are operated as such on a seasonable basis from April 1 to October 31 only.

A separate Class L license must be secured for each separate place of business in which Class M licensed devices are to be operated.

CLASS M Licenses — SLOT MACHINES

\$500.00 per summer season

Each such license shall permit the operation of from 1 to 10 slot machines of the so-called one arm type, or from 1 to 10 Class H licensed devices at one location. For each additional unit of from 1 to 10 such devices operated in one location an additional Class M license shall be required.

No Class M license shall be issued except to holders of Class L licenses.

Devices licensed under Class M licenses may be operated only during the months of May, June, July, August, September and October of the year of issuance and during the month of April of the next succeeding year.

It shall be lawful for such licensed device to issue as an award for score achieved any merchandise, token, coin or other thing of value.

No such license shall be issued for any device requiring a coin of greater value than 5¢ for its operation.

Each Class L qualifying license and each Class M license shall be displayed under glass at the authorized place of operation.

It shall be unlawful knowingly, wilfully or intentionally to permit any person under 16 years of age to operate any such device.

Each device operated under a Class M license shall have attached to it a notice printed in type of not less than one-half inch in height that it is unlawful for any minor under 16 years of age to play any such device.

* * * * *

RESOLUTION

RESOLUTION ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF ANNE ARUNDEL COUNTY at their regular meeting held on the 7th day of October 1958, adding to and amending the resolution adopted on the 11th day of April,

1957, relating to the licensing and regulation of amusement devices and amusements operated in Anne Arundel County.

BE IT RESOLVED by the Board of County Commissioners of Anne Arundel County, in regular session assembled, this 7th day of October, 1958, that the provisions for the issuance of CLASS NA, CLASS NB, CLASS NC, CLASS ND, AND CLASS NE BINGO LICENSES and all regulations appertaining thereto adopted on the 11th day of April 1957, be and the same are hereby repealed and in lieu thereof five (5) new classes of licenses for the operation of bingo games and regulations for same are hereby adopted and added to the Amusement Device Licenses for Anne Arundel County to read as follows:

Class NA Licenses —

BINGO GAMES — not exceeding 250 persons — seating or player capacity — \$1,000.00 per annum.

Class NB Licenses —

BINGO GAMES — not exceeding 500 persons — seating or player capacity — \$2,000.00 per annum.

Class NC Licenses —

BINGO GAMES — not exceeding 1,000 persons — seating or player capacity — \$4,000.00 per annum.

Class ND Licenses —

BINGO GAMES — BEACH BINGO LICENSE — not exceeding 500 persons seating or player capacity — \$500.00 per annum.

Class NE Licenses —

BINGO GAMES — BEACH BINGO LICENSE — not exceeding 1,000 persons seating or player capacity — \$1,000.00 per annum.

No such license shall be transferrable.

No such license shall be issued if it be found that the operation of any such game will unduly disturb the peace and quiet of the neighborhood in which it is proposed to operate such game.

No license to operate such game shall be issued for other than a permanent type of building, which building shall be under roof.

No license to operate such game shall be issued for any outdoor area.

The Board of County Commissioners may revoke any such license when the licensee had been found guilty by a court of competent jurisdiction, of violating any provision of this regulation.

No Class NB, Class NC Bingo License shall permit the operation of any bingo games on any Sunday.

Effective upon the adoption of the Resolution the total number of all Class NA, Class NB, and Class NC Bingo Licenses issued hereafter shall be limited to seven (7), except that present holders of Class NA, Class NB, and Class NC Bingo Licenses shall be permitted to renew their said licenses annually and shall be counted in the total number issued.

Present holders of Class NA, Class NB, Class NC, Bingo Licenses shall be permitted to continue to operate bingo games under the licenses now held until the expiration date of the said licenses without payment of any additional license fee therefor, but subject nevertheless to all of the regulations adopted hereunder.

DECLARATION OF RIGHTS

Article 19. Remedy for injury to person or property. That every man, for any injury done to him in his person or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely

without sale, fully without any denial, and speedily without delay, according to the Law of the land.

Article 23. *Due Process*. That no man ought to be taken or imprisoned or disseized of his freehold liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

APPENDIX B

In the Court of Appeals of Maryland

No. 237

September Term, 1958

Margaret M. McGowan, et al.

State of Maryland

Brune, C. J., Henderson, Hammond, Horney, J. J.

Opinion by Hammond, J.

Filed: May 14, 1959

Seven persons, convicted of making sales of merchandise forbidden on Sunday in Anne Arundel County, argue in their appeal that the trial court committed reversible error (1) in refusing to remove or postpone their trials; (2) in denying motions to dismiss the prosecutions based on the

claims the Sunday Blue Law is unconstitutional (a) as violating the right of religious freedom guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, (b) as discriminating arbitrarily in favor of certain sales and against others, and (c) as being vague and indefinite, all contrary to the Fourteenth Amendment and Articles 19 and 23 of the Maryland Declaration of Rights; and (3) in refusing to direct verdicts as to some of the accuseds after the evidence was in.

Code (1957), Art. 27, deals with "Sabbath Breaking" in Sections 492 to 534. Section 492 prohibits "bodily labor" on Sunday throughout the State, "works of necessity and charity always excepted," as well as any "unlawful pastime or recreation." Section 521 prohibits throughout the State the sale, barter or gift on Sunday of any merchandise except tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice cream, and other confectionery, milk, bread, fruits, gasoline, oil and greases, drugs, medicines and patent medicines, and newspapers and periodicals. Section 522, also State-wide in operation, makes it unlawful to keep open or use on Sunday any "dancing saloon, opera house, tenpin alley, barber saloon or ball alley." Section 509 repeals pro tanto Sections 492, 521 and 522 in Anne Arundel County insofar as they prohibit there the operating of, or working at, any "bathing beach, bathhouse, amusement park, dancing saloon", and permits in the County on Sunday the "sale or selling of any novelties, souvenirs, accessories, or other merchandise essential to, or customarily sold at, or incidental to, the operation of the aforesaid occupations and businesses, at retail, picnic groves, amusements, games, amusement rides, amusement devices, entertainments, shows. . . ."

For some time before September 1958 the Sunday laws had not been enforced regularly or vigorously in Anne Arundel County. Then, because of complaints that a newly opened branch of an interstate chain of stores was flouting the law to a degree exceeding that considered reasonable by competitors, the Anne Arundel County police began and continued an extensive and non-discriminatory crack-

down on forbidden Sunday sales. The appellants, all employees of the new store, were arrested for, and charged with, selling merchandise on Sunday in violation of Section 521.

Counsel for appellants, retained the day before the trial, asked Judge Michaelson in chambers on the morning of the trial for a postponement or removal of the trial. They were told the motions would not be granted but that they would have to be made and denied in open court. Then, in the courtroom in which the jury panel was seated, appellants requested removal of their trials from the Circuit because "there has been considerable agitation concerning these so-called Sunday Laws in this County," said they did not have the necessary affidavits prepared, and asked for a ruling on the motion as if the formalities had been complied with, and leave to file the motion and supporting newspaper clippings to show the prevailing sentiment of the community. Leave was granted for the late filing of the motion and supporting data, and the removal was denied. The motion to postpone the case because of the late employment of counsel also was denied. As to this the court said that some twenty-six days earlier he had told counsel then representing appellants that there would be no postponement and that the litigants could not now complain fairly of lack of time to make full and proper defense. The court went on to say that, from what he had been told by prior counsel for appellants, the litigants "went from one lawyer to another and then finally to you gentlemen, who represent them today, primarily for the purpose of getting these cases postponed . . . and . . . that such tactics should not be sanctioned or approved by the Court, consequently, much as it regrets to do it, it will have to overrule the motion for a postponement."

The appellants say it was an abuse of discretion for the trial judge not to grant either the motion for removal or the motion for postponement because, after he made the remarks he did in the presence of the prospective jurors, who were seated in the courtroom, they had to take a court trial or be tried by a prejudiced jury. We find no prejudicial

error. It would appear from the record that the court had told counsel in chambers that he would deny both the removal and the postponement and that counsel, before they entered the courtroom, had decided to have the cases tried by the court because of the refusal to remove the case, not because of the refusal to postpone the trials, and not because of the court's remarks in the presence of the jury.

A new panel of jurors was not requested, which could have been done if a jury trial had been wanted, because of what had been said by the court. In any event, the remarks of the court as to the reasons for refusing a postponement cannot reasonably be expected to have had the effect the appellants seek to give them. They were no more than revelations of knowledge the judge had obtained officially from agents of the appellants during the progress of the case, and there is no reason to suppose that a jury chosen from the panel seated in the courtroom would have been influenced as to the guilt or innocence of the appellants by hearing the judge temperately say that they had attempted to postpone their trials.

There is no indication in the record that community sentiment was aroused, or adverse to Sunday sales or the appellants. If anything, the newspaper accounts of the new police enforcement of the Sunday laws were more sympathetic to the position of appellants than otherwise.

It is settled that refusal to remove a non-capitol criminal case is not subject to review by this Court except upon a showing of abuse of discretion. *Piracci v. State*, 207 Md. 499, 508-509. We find no such abuse in Judge Michaelson's refusal to remove or postpone the case.

The appellants' argument that the Sunday Blue Laws are unconstitutional as violating the right of religious freedom has been answered many times by this and other courts, which have held that the basic purpose of such statutes, with their exceptions, is the civil establishment and regulation of a day of rest from work, not a law respecting the establishment of religion or prohibiting the free

exercise thereof, and that the statutes do not offend the First and Fourteenth Amendments to the Constitution of the United States. *Judefind v. State*, 78 Md. 510; *Levering v. Park Commissioners*, 134 Md. 48; *People v. Friedman* (N.Y.), 96 N.E. 2d 184, 186, and cases cited therein (appeal dismissed for want of a substantial federal question, 341 U.S. 907). We have been shown no reason why we should depart from these holdings.

The argument of unconstitutionality on the ground of discrimination likewise has been answered before by the cases. The legislative plan is plain. It is to compel a day of rest from work, permitting only activities which are necessary or recreational. There can be, and often are, sharp differences of opinion as to what is necessary and what is proper or preferred recreation, but the answers must be given by the legislature, and if they are not clearly arbitrary or oppressively discriminatory, the legislative choice must be sustained. In *Ness v. Baltimore*, 162 Md. 529, 538, Chief Judge Bond, in upholding the Baltimore City ordinance permitting specified amusements, games and sports on Sunday afternoons and permitting certain retail sales on Sunday, said for the Court (in reference to alleged discriminations in the statute): "But what is tolerable and what intolerable in Sunday observance seems to be a question which cannot be fully answered by a process of reason. It is to a large extent determined by the public conceptions of proper respect for the day, and these conceptions are the outcome of public sensibilities not based entirely upon any process of reasoning. Regulations to conform to the public conceptions can, perhaps, be less easily shaped by logical reason than almost any other governmental regulations. The constitutional prohibitions stand ready to prevent a clearly arbitrary and oppressive discrimination. But the mere fact of inequality is not enough to invalidate a law, and the legislative body must be allowed a wide field of choice in determining what shall come within the class of permitted activities and what shall be excluded." See, too, *Brown v. State*, 177 Md. 321, and *People v. Friedman*, *supra*.

Appellants say that the Anne Arundel exceptions to the state-wide law go beyond those sanctioned in the Ness case because they permit the operation of bathhouses, bathing beaches, amusement parks and related facilities, and the sale of articles customarily sold at, or incidental to the operation of these facilities, as well as the sale of alcoholic beverages, and the operation of slot machines, pinball machines, and bingo games.

What is permitted all comes within the category of recreation, long recognized as a permissible Sunday activity. That we might think more appropriate or wholesome forms of recreation could have been chosen by the Legislature is of no moment, if those that were (presumably as reflecting the prevailing sentiment of the community) are not arbitrarily discriminatory or oppressive. We find the arguments of appellants on this point no more than the claim that the statutes are unwise, and, if they are right, this of itself does not make the law invalid.

We come to the contention that the Anne Arundel County Sunday law is unconstitutionally vague, because no merchant can know whether or not the article he sells on that day is a novelty, souvenir, accessory or piece of merchandise "essential to, or customarily sold at, or incidental to, the operation of" bathing beaches, bathhouses, amusement parks or dancing saloons. This argument is made on the premise that Sec. 509 broadens the exceptions of Sec. 521 throughout Anne Arundel County so that anything "customarily sold at" a bathing beach, bathhouse, amusement park or dancing saloon can be sold on Sunday anywhere in the County. It may well be that the legislative intent in Sec. 509 was to permit the use and enjoyment by the public on Sunday of the specified places of recreation and to insure that enjoyment by allowing patrons to buy, on the spot, what they customarily could buy to use the facilities to the fullest. We need not decide whether sales were intended to be limited to the places of amusement specifically allowed to operate on Sunday. If we assume, as do the appellants, that the language of Sec. 509 is broad enough to permit sales anywhere in the County,

we do not find Sec. 521 as so broadened by Sec. 509 unconstitutionally vague.

A criminal statute must be sufficiently explicit to enable a person of ordinary intelligence to ascertain with a fair degree of precision what it prohibits and what conduct on his part will render him liable to its penalties, or it will affront the constitutional guarantees of due process. But such a statute is not void for indefiniteness merely because it exacts the burden of rightly estimating a matter of degree, or because juries may differ in their judgments in cases brought under it on the same state of facts. *State v. Magaha*, 182 Md. 122, 125. See also *Ruark v. Engineers' Union*, 157 Md. 576, 583, et seq., and *Glickfield v. State*, 203 Md. 400, 404. Section 509 clearly informs those who read it as to the type of articles that may be sold on Sunday in Anne Arundel County. We think that a person of ordinary intelligence could know with a fair degree of precision what he could or could not sell.

As the Supreme Court has noted, a statute is not to be condemned because there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls. *United States v. Petrillo*, 332 U.S. 1, 7, 91 L. Ed. 1877 (there the statute, upheld against the defense of unconstitutional vagueness, made it a criminal offense to coerce a radio broadcaster to employ, or agree to employ, any person in excess of the number needed to perform actual services). In *Boyce Motor Lines v. United States*, 342 U.S. 337, 339, 340, 96 L. Ed. 367, 370, 371, there was involved the regulation of the Interstate Commerce Commission, authorized by 18 U.S.C. Sec. 835, that required a driver of an interstate motor vehicle, transporting explosive or inflammable substances, to avoid "so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts, and dangerous crossings." The Supreme Court said, treating the regulation as a criminal statute: "... no more than reasonable degree of certainty can be demanded. Nor is it unfair to require

that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." In *Sproles v. Binford*, 286 U.S. 374, 393, 76 L. Ed. 1167, 1182, the words in a criminal statute "shortest practicable route" were held not too vague to be unconstitutional.

The court should have directed verdicts for them say five of the appellants. One sold a toy submarine and four sold staplers. It is argued that the submarine is "merchandise" and the staplers "accessories" that are "customarily sold at" a bathing beach. There was no error in refusing to direct the verdicts. It is not so clear that these articles are customarily sold at a bathing beach that the court could so rule as a matter of law. It was for the trier of fact to decide whether the submarine and the stapler had been excepted by the statute or not. *Callan v. State*, 156 Md. 459, 466, 467. There the accused was convicted of running an "opera house" on Sunday. He claimed reversible error in the refusal of the trial court to permit him to produce a witness to testify "as to what is an opera house" in support of his contention that his business, that of showing motion pictures, was not within the meaning of that term. This Court rejected that contention on the ground that what constituted an opera house was a question to be decided by the jury on the basis of "ordinary experience."

The judgments will be affirmed.

JUDGMENTS AFFIRMED. WITH COSTS.